HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

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Writ Petition No.16781 of 2005

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Between:

P.Vishnu Priya and two others

……Petitioners

And

The A.P State Consumer Dispute Redressal Commission,

Hyderabad, rep. by its Registrar and another

……Respondents

:: ORDER ::

Counsel for the Petitioners : Smt. Pushpinder Kaur

Counsel for Respondent No. 2 : Shri Y.Venkateswar Rao

October 23, 2006

Per G.S. SINGHVI, CJ

This is a petition for quashing order dated 28-6-2005 passed by the Andhra Pradesh State Consumer Disputes Redressal Commission (for short, 'the State Commission') in FAIA No.1137 of 2005 (F.A.No.779 of 2005).

The factual matrix of the case lies in a narrow compass. Respondent No.2 – Ch. Bharathi w/o.Ch. Brahmaji filed a complaint before District Consumer Disputes Redressal Forum-II, Hyderabad (for short, 'the District Forum') under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act') for issue of a direction to the opposite parties (petitioners herein) to return an amount of Rs.2,75,000/- with interest by alleging that she had entered into an agreement with the opposite parties on 30-4-2003 for purchase of property bearing No.365-A, IV Floor, Janapriya Township, Mallapuram, Ranga Reddy District and paid Rs.2,75,000/- to them as sale consideration, but they have neither registered the flat in her name nor returned the money. The complaint filed by respondent No.2 was registered as C.D.No.1180 of 2004.

On notice, the petitioners filed counter. They denied the execution of agreement of sale and pleaded that the allegations levelled by the complainant were factually incorrect and legally untenable.

On the pleadings of the parties, the District Forum framed the following points for consideration:

1. Whether there is deficiency in service on the part of opposite parties 1 to 3 towards the complainant?

2. Whether the complainant is entitled for any of the reliefs prayed for in the complaint?

After analysing of the evidence produced by the parties, the District Forum held that the complainant (respondent No.2 herein) has been able to prove the execution of agreement of sale and payment of Rs.2,75,000/- to the opposite parties. The District Forum then noted that the advance cheque issued by opposite party No.2 (petitioner No.2 herein) in favour of the complainant was dishonoured by the bank due to insufficiency of the amount and held that this was sufficient to establish the deficiency in service. On that premise, the District Forum allowed the complaint and declared that opposite party Nos.1 to 3 are jointly and severally liable to refund Rs.2,75,000/- to the complainant (respondent No.2) with interest @ 12% per annum w.e.f. 30-4-2004 till the date of payment. The District Forum also awarded compensation of Rs.25,000/- and costs of Rs.1,000/- to the complainant (respondent No.2).

The petitioners challenged the order of the District Forum by filing appeal under Section 15 of the Act. They also filed an application for staying of all further proceedings in C.D.No.1180 of 2004. The State Commission accepted the petitioners' prayer for interim relief subject to the condition that they shall deposit a sum of Rs.1,00,000/- within four weeks in addition to the statutory deposit and gave liberty to the complainant (respondent No.2 herein) to withdraw the amount without furnishing any security.

Smt.Pushpinder Kaur argued that the direction given by the State Commission for deposit of Rs.1,00,000/- as a condition for staying the proceedings of C.D.No.1180 of 2004 is liable to be quashed because there is no provision in the Act under which the appellant can be called upon to deposit anything over and above an amount of Rs.25,000/-, which is required to be deposited as a condition for entertaining the appeal. She then argued that once an appeal is entertained, the State Commission is duty bound to stay the proceedings pending before the District Forum, else, the purpose of filing appeal will be frustrated.

Shri Y. Venkateswara Rao, learned counsel for respondent No.2 argued that the discretion exercised by the State Commission to stay proceedings of C.D.No.1180 of 2004 subject to the condition of deposit of Rs.1,00,000/- by the petitioners does not suffer from any legal infirmity requiring interference by the High Court under Article 226 of the Constitution of India. He submitted that Section 15 does not have any bearing on the power of the State Commission to pass appropriate interim order and there is nothing arbitrary in the condition imposed by the State Commission for staying the proceedings of C.D.No.1180 of 2004. Learned counsel emphasized that respondent No.2 was duped by the petitioners and, therefore, the State Commission rightly directed them to deposit Rs.1,00,000/- with liberty to respondent No.2 to withdraw the same without furnishing any security.

We have considered respective submissions. Section 15 of the Act, which provides for filing of appeal against the order of the District Forum, reads as under:

> "**15. Appeal**. .
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> Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:
>
> Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.
>
> Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less."

An analysis of the above reproduced provision makes it clear that any person

feeling aggrieved by the order of the District Forum can file an appeal to the State Commission within thirty days from the date of order. First proviso to Section 15 empowers the State Commission to entertain the appeal after expiry of 30 days period provided that it is satisfied that there was sufficient cause for not filing appeal within the period of limitation. Second proviso to Section 15, which was inserted by Consumer Protection (Amendment) Act, 2002, lays down that an appeal filed against an order of the District Forum vide which the aggrieved person is directed to pay any particular amount to the complainant shall not be entertained unless the appellant has deposited 50% of the amount specified in the order under challenge or Rs.25,000/-, whichever is less. In other words, even if an appeal is preferred against an order passed by the District Forum directing the appellant to pay a specified amount to the complainant, the same cannot be entertained by the State Commission unless the appellant deposits 50% of the amount in dispute or a sum of Rs.25,000/-, whichever is less. However, Section 15 has nothing to do with the power of the State Commission to grant interim relief, which is implicit in the exercise of the jurisdiction vested in it under the Act and the condition of pre-deposit enumerated in the second proviso to this Section cannot operate as an impediment to the State Commission's power to grant appropriate interim relief with or without any other condition.

In the present case, the State Commission has passed conditional stay, the benefit of which can be availed by the petitioners only on deposit of Rs.1,00,000/-. If the order of the State Commission is scrutinized in the backdrop of the order passed by the District Forum, it is not possible to hold that the condition imposed by the State Commission is arbitrary or unreasonable or onerous so as to warrant interference by the High Court under Article 226 of the Constitution of India. The order passed by the District Forum for payment of Rs.2,75,000/- to the complainant (respondent No.2 herein) with interest @ 12% per annum w.e.f.
30-4-2004 and compensation of Rs.25,000/- is in the nature of a money decree. Therefore, the State Commission did not commit any illegality when it directed the petitioners to pay less than one-third of the total amount payable to respondent No.2 and we do not see any reason to tinker with the discretion exercised by the State Commission. At the same time, we feel that the liberty given by the State Commission to respondent No.2 to withdraw the amount without furnishing security deserves to be modified so that all is not lost for the petitioners in the event of success in the appeal.

In the result, the writ petition is disposed of in the following terms:

1. The petitioners' prayer for quashing the order of the State Commissioner is rejected.

2. However, liberty given by the State Commission to respondent No.2 to withdraw the amount without furnishing any security is modified and it is ordained that respondent No.2 will be entitled to withdraw the amount of Rs.1,00,000/- only after furnishing solvent security to the satisfaction of the Registrar of the State Commission.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

23-10-2006

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